

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of)	MM Docket No. 93-75
TRINITY BROADCASTING OF FLORIDA,)	
INC.)	BRCT-911001LY
For Renewal of License of)	
Television Station WHFT(TV))	
Miami, Florida)	
GLENDAL E BROADCASTING COMPANY)	BPCT-911227KE
For Construction Permit)	
Miami, Florida)	

To: Hon. Joseph Chachkin
Administrative Law Judge

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OBJECTIONS TO WITNESS NOTIFICATION

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SUMMARY

TBF opposes as overbroad, unsupported, and in several cases procedurally improper the witness requests made by Glendale, the Bureau, and SALAD.

Glendale asks that TBF produce for "cross-examination" seven persons who have submitted no direct testimony on which they could be cross-examined. If Glendale had wanted testimony from such persons, it should have submitted their deposition testimony as part of its direct case or given notice on the exchange date that it would call them as adverse witnesses. The request for "cross-examination" is procedurally improper and comes too late.

As to the non-party witnesses, Glendale has made no showing why they should be required to appear for examination again when Glendale took their depositions and had full opportunity to elicit whatever testimony it needed. The same is true of the request for Pastor Phillip Aguilar (formerly a Director of NMTV), whose deposition testimony has been submitted by TBF in its entirety (TBF Exhibit 107).

TBF likewise should not have to produce the four persons whose testimony has been exchanged under the renewal expectancy issue. Although TBF cooperated fully with Glendale at Glendale's request in providing information that was to lead to a stipulation under this issue, Glendale never produced a draft

stipulation and now seeks to cross-examine the witnesses instead. In light of Glendale's failure to utilize the process that Glendale itself proposed and in which TBF invested a great deal of time and effort, and Glendale's failure to submit any justification for its request, Glendale's request for these witnesses should be denied.

Finally, the presiding Judge should reject SALAD's blanket claim of a right to cross-examine witnesses it has not noticed.

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OBJECTIONS TO WITNESS NOTIFICATION

Trinity Broadcasting of Florida, Inc. ("TBF"), by its counsel and pursuant to the Presiding Judge's Order, FCC 93M-418, released June 28, 1993 ("Order"), respectfully submits the following objections to the "Witness Notifications" filed on November 16, 1993, by Glendale Broadcasting Company ("Glendale"), the Mass Media Bureau ("Bureau"), and the Spanish American League Against Discrimination ("SALAD"), respectively.

A. Preliminary Statement

1. On November 16, 1993, Glendale identified 29 persons whom it asks TBF to produce for what Glendale calls "cross-examination." However, seven of those people have submitted no direct testimony in this proceeding on which they could be cross-examined. Altogether, Glendale's proposed witness list includes 19 people that the Bureau has not deemed necessary to call, and 23 people that SALAD has not deemed necessary to call.

2. Cross-examination, and especially the examination of individuals who have sponsored no testimony, are not absolute rights. The Presiding Judge has the discretion to restrict such examination in a manner that will conduce to the orderly dispatch of the Commission's business. The Commission accords the Administrative Law Judge broad discretion in conducting a hearing, particularly with respect to calling or not calling witnesses. New Continental Broadcasting Co., 88 FCC 2d 830, 834, n. 5, 50 RR 2d 1117, 112, n. 5 (Rev. Bd. 1981). Exercise of this discretion is particularly appropriate where it serves the efficient and expeditious conduct of a multi-party hearing. Las Americas Communications, Inc., 1 FCC Rcd 786, 795, 61 RR 2d 1008, 1027 (Rev. Bd. 1986). Here, based on both the substantive and procedural requirements of this proceeding, many of Glendale's witness requests improper and unwarranted. Moreover, in most instances these witnesses will add little or nothing that is useful to a full record, but their appearance will

consume many days of hearing time. By these objections, TBF respectfully submits that the number of individuals it should be required to produce for examination at the hearing be limited to 14. TBF objects to the other witness notifications for the following reasons:

B. Glendale

3. Allan Brown, Terrence M. Mickey, Phillip A. Crouch, Warren Benton Miller, George Horvath, Jr., Matthew Crouch, and Charlene Williams. Glendale's requests that TBF produce these individuals for "cross-examination" are both procedurally improper and substantively unwarranted. None of these persons has sponsored any direct testimony that could be subject to cross-examination. The few sentences about each person that Glendale recites are facts which are readily ascertainable from other witnesses who will testify without the need to parade seven more people to the witness stand.^{1/}

4. The evidence which would be provided by these witnesses is largely cumulative, as indicated by the length of the questions to which some of these witnesses were subjected during the deposition. Glendale's and the Mass Media Bureau's examination of Matthew Crouch, for example, consumed all of 27

^{1/} For example, the fact that Phillip Crouch has been an officer of NMTV may be ascertained from the Commission's files and is included in Mrs. Duff's testimony (e.g., TBF Ex. 101, Tab R).

pages of transcript. (Charlene Williams -- 44 pages; Allan Brown -- 75 pages.) Moreover, Glendale's principal justification for calling these witnesses is subsumed within the following boilerplate that Glendale repeats about each requested person:

"His [Her] deposition reflects that (s)he has knowledge of facts which are relevant to the designated issues against TBF."

However, if Glendale wanted to introduce testimony from these individuals, it was obligated to make those witnesses part of its own direct case, which it was required to exchange on November 12, 1993.

5. In this regard, paragraph 54 of the Hearing Designation Order, FCC 93-148, released April 7, 1993 ("HDO"), provides as follows:

"54. IT IS FURTHER ORDERED, That Glendale and SALAD shall have the burden of proceeding with the introduction of evidence as to issues (a) through (c)...."

Thus, as a party with the burden of proceeding, Glendale was required under the Presiding Judge's Order (as modified by FCC 93M-674, released October 26, 1993) to exchange its written direct case on November 12, 1993. That exchange should have included either (a) the deposition transcript of any person whose testimony Glendale wanted to introduce or (b) notice that Glendale would call such person for examination as an adverse

witness as part of Glendale's direct case. Glendale did neither of those things, even though it took the depositions of each of the persons named. Instead, it improperly wants to bootstrap under the inapposite label of "cross-examination" what is plainly an untimely request to supplement its direct case. Whatever testimony is elicited from these witnesses will likely be cumulative to the evidence provided by the thousands of pages of written testimony and documents already provided, and the weeks of oral testimony that will be given by NMTV's principals. Because Glendale's request is untimely, it must be rejected on that ground alone.

6. Moreover, even if Glendale's untimely notice were entertained, it would require an extraordinary showing of good cause to justify its lateness. Glendale has made no adequate showing, extraordinary or otherwise, of why these persons should be required to appear for testimony. There is no showing whatsoever that testimony from these persons would materially aid the record or contribute to the resolution of the case. Accordingly, Glendale's request for the production of Allan Brown, Terrence M. Hickey, Phillip A. Crouch, Warren Benton Miller, George Horvath, Jr., Matthew Crouch, and Charlene Williams should be denied.

7. Edward Rick, III and Barry L. March. As part of its direct written case under the Glendale misrepresentation/lack of candor issue, TBF has offered portions of the transcripts of the

depositions of **Edward Rick, III** and **Barry L. March**. Mr. Rick is the owner/manager of the Lancaster, Pennsylvania, transmitter site proposed by Raystay Company ("Raystay") in its LPTV construction permit applications. Mr. March is the general manager of the Lebanon, Pennsylvania, transmitter site proposed by Raystay.

8. Messrs. Rick and March are both non-party witnesses who have no stake whatsoever in the outcome of this proceeding. (See, e.g., Tab 1, March Dep. at 42-43.) No facts have been alleged that place the credibility of either witness at issue, and Glendale has not shown any need to observe the demeanor of either witness. Mr. March is the general manager of a large hotel/motel in Lebanon, and Mr. Rick is an owner and the manager of a cement company in Lancaster. It would be extremely disruptive to these individuals if they had to abandon their managerial responsibilities in order to appear in Washington to be examined for a second time in this proceeding.

9. TBF recognizes that under §1.321(c)(3) of the Commission's Rules, a witness whose deposition is submitted as direct case testimony is to be "made available for cross-examination." 47 C.F.R. §1.321(c)(3). However, Glendale has already had a full opportunity to thoroughly cross-examine both Mr. Rick and Mr. March at depositions that Glendale itself noticed and conducted. These were Glendale's depositions, not TBF's. The witnesses, having been subpoenaed by Glendale,

answered every question that Glendale's counsel asked. The full deposition transcripts (or any portions that Glendale may wish to use) are available to Glendale for submission into the record. Under these circumstances, the purposes of §1.321(c)(3) are fully served by the cross-examination of Mr. Rick and Mr. March that Glendale has already conducted. Glendale has not shown why further cross-examination is necessary or how the record would benefit by forcing these non-party witnesses to travel to Washington, D.C., to be questioned all over again on matters to which they have already testified.

10. In a closely analogous situation, the Presiding Judge has ruled that the deposition testimony of SALAD's "non-public" witnesses will serve as their testimony at hearing, and that those witnesses need not appear in Washington. (Tr. at 133-135; Tab 2.) There is absolutely no reason why the same procedure should not govern with regard to the testimony of Messrs. Rick and March.

11. Phillip Russell Aguilar. Pastor Aguilar is a minister in California. The hearing will occur during the Advent-Christmas and Hanukkah seasons, when the demands on the time of clergymen of all faiths is greatest. Pastor Aguilar is not currently a principal of any party to this proceeding. He was a Director and officer of NMTV only from August 1990 to April 1993, a period that post-dates NMTV's establishment of the two full power television stations of which it has been the licensee

and most of the certifications of minority preferences that are the subject of this proceeding.^{2/} As with Messrs. Rick and March, Glendale has already had a full opportunity to thoroughly examine Pastor Aguilar. The deposition testimony that TBF has exchanged was not a deposition that TBF itself conducted. It was a deposition that Glendale and the Bureau conducted. The deposition spans 224 pages, more than 80% of which are Glendale's questions and the responses. Both Glendale and the Bureau asked every question they wanted. TBF has submitted the entire transcript (TBF Exhibit 107), thereby including all responses that Glendale might consider to be beneficial to its position. Under these circumstances, the cross-examination of Pastor Aguilar already conducted by Glendale fully serves the purposes of §1.321(c)(3), and Glendale has not shown why further cross-examination is needed. Given (a) the absence of such a showing, (b) the limited time period when Pastor Aguilar was a principal of NMTV, (c) the fact that he is no longer a principal of any party, (d) the substantial hardship involved in forcing a pastor to give up his responsibilities during a season when those responsibilities are the greatest and travel across the country, and (e) the fact that he has already appeared for examination and answered every question put to him, the request for the production of Pastor Aguilar should be denied.

^{2/} For that reason TBF makes no objection to Glendale's proposed cross-examination of Rev. David Espinoza, who also is no longer a principal of NMTV.

12. Michael S. Everett, Teresa Robin Downing, Lindee C. Dressler, and Christopher A. Holt. Glendale requests the cross-examination of these individuals under the renewal expectancy issue. Glendale's request should be denied because, despite TBF's cooperation in providing Glendale with the information about renewal expectancy which Glendale has requested, Glendale has failed to show any reason why the cross-examination of these witnesses should be required.

13. In this regard, during the discovery phase of this proceeding Glendale strongly urged that, in lieu of formal depositions, TBF should provide Glendale with informal access to the witnesses whom TBF would sponsor under the renewal expectancy issue. (See Tab 3.) The result of the process was to be that, following Glendale's informal interviews with the witnesses, Glendale would prepare a proposed stipulation that would probably obviate any need for the witnesses to testify in Washington, or at least would greatly narrow any areas on which cross-examination would be warranted. TBF agreed to the procedure, and TBF's counsel spent several days in Miami during which Glendale questioned Mr. Everett and Ms. Downing without limitation. TBF furnished supplemental information to Glendale following those interviews, as well as hundreds of pages of documents over and above the thousands of pages of documents already produced. TBF's counsel also arranged a conference call with Ms. Dressler, who is no longer an employee of any party to

this proceeding, so Glendale could obtain information via this informal process from her as well.

14. Despite TBF's full cooperation in the informal process that Glendale requested, Glendale did not provide TBF with a proposed stipulation, even though the exhibit exchange date has now come and gone, and even though Glendale has represented to the Presiding Officer as early as June 8 that Glendale would "...try to stipulate to much of the renewal expectancy material." (Tr. 12.) More significantly for present purposes, Glendale has utilized none of the information that TBF voluntarily provided to Glendale to show the Presiding Judge the slightest reason why cross-examination of witnesses under the renewal expectancy issue is required. Significantly, neither the Bureau nor SALAD has requested any such cross-examination. In light of Glendale's total failure to justify its requests for Michael S. Everett, Teresa Robin Downing, Lindee C. Dressler, and Christopher A. Holt, as well as its failure to seek to reach stipulations concerning the subject matter of their testimony, those requests should be denied.

C. The Bureau

15. The Bureau has asked that TBF produce ten individuals for cross-examination. TBF has no objection to producing eight of those ten. However, as indicated above, TBF has offered no direct testimony from Warren Benton Miller and the Bureau's

notice states no reason at all why he should be required to travel from California to be examined.^{3/} As also indicated above, the Bureau already has had the opportunity to cross-examine Pastor Aguilar, and the responses to the Bureau's examination are already included in the proffered testimony. The Bureau's witness notification states no reason why it requires a further opportunity to examine Pastor Aguilar on matters about which it has already examined him. Therefore, the Bureau's requests for Mr. Miller and Pastor Aguilar should be denied.

D. SALAD

16. As indicated in paragraph 4 above, the HDO ordered that SALAD "shall have the burden of proceeding with the introduction of evidence as to issues (a) through (c)." Despite that Order, SALAD has exchanged no direct case to make even a prima facie showing under those issues. Instead, SALAD's entire direct case is limited to the renewal expectancy issue. In view of SALAD's failure to meet its burden of proceeding, there is a legitimate question as to whether SALAD should retain any cross-examination rights at all.^{4/}

^{3/} Mr. Miller was deposed by the Bureau and Glendale, pursuant to the joint notice, on September 21-22, 1993.

^{4/} It also is noteworthy that, although SALAD served a request for production of documents which called for the production of tens of thousands of pages of information, SALAD has never come to the offices of TBF's counsel to review any of
(continued...)

17. To the extent SALAD is accorded cross-examination rights, TBF does not object to its cross-examination of five of the six witnesses it has noticed. However, for the reasons indicated above, in light of the extensive adverse examination to which Pastor Aguilar already has been subjected, and the complete absence from SALAD's witness notification of any reason his further cross-examination should be required, SALAD's request for the cross-examination of Pastor Aguilar should be denied.

18. In addition, SALAD's statement that it "reserves the right to participate in the cross examination of any other witnesses testifying at the hearing in this case" should also be rejected. Orderly process, especially in a case of this magnitude and length, warrants that each party comply with the Presiding Judge's Order by specifically serving notice of the witnesses it wants to examine. An attempt to ride the coattails of other parties' witness notifications through a blanket reservation of participation rights subverts the purpose for requiring parties to identify the witnesses they wish to cross-examine. Thus, if SALAD is permitted to conduct any cross-

4/ (...continued)

those documents. SALAD, like the other parties, must comply with the procedural requirements of the case. SALAD's failure to review the documents that SALAD itself requested TBF to accumulate and produce, at TBF's expense, and its failure to exchange any direct case to satisfy the burden of proceeding the Commission ordered it to meet, are highly inappropriate.

examination at all, it should be restricted to examining those witnesses whose cross-examination SALAD itself has specifically noticed. Once again, the expeditious and orderly conduct of a hearing requiring testimony from at least 14 persons justifies this limitation, particularly since two other parties will be conducting a full cross-examination of the witnesses.

E. Conclusion

19. In view of the foregoing, TBF has no objection to producing for cross-examination by the parties who have requested them the following 14 individuals whose appearances have been requested: Pearl Jane Duff, Edward Victor Hill, Armando Ramirez, Paul F. Crouch, Colby M. May, Phillip David Espinoza, Norman G. Juggert, James G. McClellan, Christopher F. Warner, Sr., Shinobu Sakurai Chrisman, Brian K. Mitchell, Timothy Greenidge, En Young Park, and Mona McDonald. In addition, the parties have agreed to the submission by stipulation of the testimony of David Scott Morris. However, for the foregoing reasons, the requests for the production of Allan Brown, Terrence M. Hickey, Phillip A. Crouch, Warren Benton Miller, George Horvath, Jr., Matthew Crouch, and Charlene

Williams, Edward Rick, III, Barry L. March, Phillip Russell
Aguilar, Michael S. Everett, Teresa Robin Downing, Lindee C.
Dressler, and Christopher A. Holt, should be denied.

Respectfully submitted,

TRINITY BROADCASTING OF FLORIDA, INC.

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In re Applications of :
: MM DOCKET NO. 93-75
TRINITY BROADCASTING OF :
FLORIDA, INC. : File No. BRCT-911001LY
:
For Renewal of License of :
Station WHFT(TV) on :
Channel 45, Miami, Florida: **COPY**
and :
:
GLENDALE BROADCASTING : File No. BPCT-911227KE
COMPANY :
:
For a Construction Permit :
for a New Commercial TV :
Station to operate on :
Channel 45, Miami, Florida:

Deposition of: BARRY L. MARCH

Taken by : LEWIS I. COHEN, ESQUIRE

Before : Alfred W. Kershaw, RPR
Official Court Reporter

Beginning : Friday, September 10, 1993
10:00 a.m.

Place : Hearing Room 221
Lancaster County Courthouse
Lancaster, Pennsylvania

COUNSEL PRESENT:

MULLIN, RHYNE, EMMONS & TOPEL
1000 Connecticut Avenue Suite 500
Washington, D.C., 20036
BY: NATHANIEL F. EMMONS, ESQUIRE

and
CHRISTOPHER A. HOLT, ESQUIRE
Appearing for Trinity Broadcasting
of Florida, Inc.

1 Q. They were turned in by Raystay. That's
2 the first you have heard of this; is that right?

3 A. Yes.

4 Q. But had Mr. Holt never told you that?

5 A. No.

6 Q. What else did Mr. Holt tell you about
7 the status of the I case, as you put it?

8 A. Basically, that's it.

9 Q. So he said to you that Raystay had
10 applied for two extensions, or how many extensions?

11 A. He just said extensions, the word,
12 plural.

13 Q. Plural?

14 A. Yes.

15 Q. And did he tell you anything else about
16 the status of the case?

17 A. Not from great detail. I'll state
18 again, I don't want to be involved in this, and I
19 don't want to know what knowledge Mr. Holt has
20 concerning this case, and I don't care about his
21 interest in the case.

22 Q. Well, once you submitted this affidavit
23 you got yourself involved, and that's why you're
24 here this morning.

25 Now, do you have any knowledge of what

1 the proceeding is that is now pending before the
2 Federal Communications Commission that's requiring
3 your testimony here this morning?

4 A. No.

5 Q. Mr. Holt never told you that?

6 A. Again, the conversations were vague
7 because I kept them on that level. I don't want to
8 be on the phone for one hour listening to all the
9 facts involved in this case and the dates involved
10 in this case because I have no interest in this
11 case. *

12 Q. Well, you're involved in the case,
13 whether you like it or not, and in all probability
14 you will be a witness in a hearing.

15 Did Mr. Holt talk to you about the fact
16 that you will probably be a witness in Washington,
17 D.C. at a hearing before an administrative law
18 judge?

19 A. No.

20 Q. He didn't tell you that you would
21 probably be traveling to Washington, D.C. in
22 December?

23 A. No.

24 Q. That's the first time you have heard of
25 that?

1 JUDGE CHACHKIN: In light of that fact, then there's
2 obviously no need for a hearing in Florida concerning the non-
3 public witnesses. Of course, the parties have reserved their
4 right to object to receipt of all or some of these exhibits
5 and I'll make those rulings when, when I rule at the
6 admissions session.

7 MR. MAY: Your Honor, in addition to the affidavits
8 that were provided on behalf of the station, SALAD has also
9 provided a series of --

10 JUDGE CHACHKIN: Well, I was going to get to that.

11 MR. MAY: Oh, I'm sorry.

12 JUDGE CHACHKIN: I was going to get to it. Now that
13 I've taken care of the ones -- yours, I'm going to get to Mr.
14 Honig's documents. Do you wish to cross-examine any of these
15 individuals?

16 MR. MAY: Your Honor, we do wish to cross-examine
17 some of these individuals.

18 JUDGE CHACHKIN: Which of the individuals do you
19 wish to cross-examine?

20 MR. MAY: We believe we'd like to cross-examine all
21 of the individuals.

22 JUDGE CHACHKIN: All of the individuals. All right.
23 Anyone else wish to cross-examine any of these individuals?

24 MR. COHEN: Your Honor, I would, I would like to ask
25 you to review what, what -- where we stand in terms of what --

1 before I respond that is, as to what procedures are available,
2 what procedures you're going to follow. It was my
3 understanding at the last conference that you were -- I'm not
4 clear, but I thought that you were inclined to follow the
5 procedures you had followed in earlier cases which was
6 followed in the Longmont proceeding, to wit, that you didn't
7 hear these non-public witnesses' testimony, but that
8 depositions were taken and then the depositions were entered
9 into evidence along with the, the declarations and it's
10 relevant to me to know -- in terms of responding to your
11 question, to know if that's the procedure you propose to
12 follow in this case.

13 JUDGE CHACHKIN: Well, I see no reason not to follow
14 that procedure, to let the parties depose these individuals at
15 the time the depositions are taken of the principles. We're
16 dealing here with -- what is it, less than ten witness? I see
17 no reason or that any useful purpose will be served if a
18 hearing was held for that purpose. I think this can be done
19 by deposition.

20 MR. COHEN: Well, then -- and I agree, Your Honor.
21 I think that that's the preferred procedure. I don't know
22 whether Glendale will definitely depose any of these persons
23 or not. Certainly if Mr. May tells me that he's not, then I'm
24 sure my client won't, but if he's going to depose them, then
25 I'd like to reserve the right to do it, Your Honor. But I